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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

No. 428

H. CHASSANIOL ET AL., APPELLANTS,

vs.

CITY OF GREENWOOD, APPELLEE.

STATEMENT AS TO JURISDICTION.

A.

Statutory provisions believed to sustain the jurisdiction of the Supreme Court of the United States of the above styled cause.

Appellants: H. Chassaniol, and B. B. Provine, R. F. Sabin, and W. F. Levy, sureties on the said H. Chassaniol's appeal bond in the State court:

Appellee: City of Greenwood, a Mississippi municipal corporation.

Appellee, acting under the authority of the statutes of the State of Mississippi, exacted of the appellant, H. Chassaniol, a privilege tax as a condition precedent to appellant engaging in the business of a cotton buyer. This privilege tax was paid by the appellant under protest, and the appellant seeks to recover the amount so paid upon the ground that he is engaged in interstate commerce and that

the privilege tax levied and collected constitutes a direct burden upon interstate commerce, contravening Article 1, Section 8, Clause 3, of the Federal Constitution, and that the said State statutes and municipal ordinances levying said privilege tax are therefore void in so far as they affect the business of and apply to the appellant. The decision of the City Council of the City of Greenwood, Mississippi, and the decision of the Circuit Court of Leflore County, Mississippi, being adverse to appellant, the appellant appealed to the Supreme Court of Mississippi, attacking as invalid and unconstitutional the statutes and ordinances hereinafter quoted, levying said privilege taxes, on the ground that they and each of them were repugnant to the Constitution of the United States. The judgment of the Supreme Court of Mississippi, the highest court of Mississippi in which this question might be determined, was in favor of the validity of said statutes and ordinances and each of them, and said court denied the Federal right claimed. Justice Anderson dissented.

This appeal is taken under Section 237 Judicial Code, as amended, the same being Section 344, of Title 28, U. S. C. A., and under Section 861-A, Title 28, U. S. C. A. The decisions sustaining the jurisdiction of the Supreme Court of the United States of appeals to determine the invalidity of a state statute and/or municipal ordinance averred to contravene the Federal Constitution where the highest court of the State sustains the statute and/or ordinance and denies the Federal right are:

John B. King Manf'g Co. v. *City Council of Augusta, et al.*, 277 U. S. 99;

Nashville, C. & St. L. Ry. v. *White*, 278 U. S. 456;

Great Northern Railway Co. v. *State of Minnesota*, 278 U. S. 503;

State v. *Interstate Natural Gas Co.*, 284 U. S. 41.

B.

The statutes of the State of Mississippi whose constitutionality is challenged in this cause, are:

1. Section 56, of Chapter 88, Mississippi Laws of 1930. (See page 8, of the appendix hereto, for the full text of this statute.)

2. Section 62, of Chapter 89, Mississippi Laws of 1932. (See pages 8-9, of the appendix hereto, for the full text of this statute.)

3. Section 2445, Mississippi Code of 1930. (See page 9, of the appendix hereto, for the full text of this statute.)

The two ordinances of the City of Greenwood, Mississippi, whose constitutionality is challenged in this cause, are:

1. An ordinance of the City of Greenwood, approved February 3, 1930, appearing in Minute Book 12, at page 56, of the Minutes of the City of Greenwood. (See page 9, of the appendix hereto, for the full text of this statute.)

2. An ordinance of the City of Greenwood, approved June 7, 1932, and appearing in Minute Book 13, at page 597, of the Minutes of the City of Greenwood. (See page 12, of the appendix hereto, for the full text of this statute.)

The payment of the privilege tax assessed by the statutes above referred to was made a condition precedent to engaging in the business of a cotton buyer, and a failure to pay such privilege tax made the cotton buyer subject to the penalties set forth in Section 225, of Chapter 88, Mississippi Laws of 1930. (See pages 14-15, of the appendix hereto, for the full text of this statute.)

Section 3 of each of the two ordinances of the City of Greenwood, Mississippi, above referred to adopts Section 225, Chapter 88, Mississippi Laws of 1930. (See pages 14-15, of appendix hereto, for full text of this statute.) This action by the City of Greenwood was authorized by Section 2549, Mississippi Code of 1930. (See page 15, of appendix hereto, for the full text of this statute.)

C.

The judgment of the Supreme Court of Mississippi in this case, which is the judgment sought to be reviewed on appeal to the Supreme Court of the United States, was rendered on May 6, 1933. This judgment became final on June 5, 1933, upon which date judgment was entered adverse to appellant's suggestion of error. The appellant's petition for an appeal of this cause to the Supreme Court of the United States was presented to Honorable Sydney Smith, Chief Justice of the Supreme Court of Mississippi, on the 9th day of August, 1933, on which day the appeal was allowed.

D.

Statement of Case.

The Mississippi Delta, composed of alluvial soil, comprises about 6,650 square miles, and is peculiarly adapted to the growing of Delta-Type long staple cotton, recognized throughout the world as being of a superior type, strength and character. All of the long staple cotton produced in Mississippi ultimately goes into interstate commerce, none of it being utilized in the State of Mississippi. The City of Greenwood is located in the Mississippi Delta and there exists in said city an extensive market for long staple cotton, the price of which is fixed in Greenwood by quotations

from cotton exchanges located in New Orleans, New York and Liverpool, England. The long staple cotton produced in the Greenwood territory is concentrated at three compresses in Greenwood for the purposes of compression, sale and shipment in interstate commerce. The three compresses in Greenwood have all complied with the terms and provisions of United States Warehouse Act, Chapter 10, Title 7, U. S. C. A. (Section 241 *et seq.*), and when the cotton is delivered to said compresses it is graded and classed by persons licensed as classers by the United States Department of Agriculture. Approximately 30 per cent of the cotton sold upon the Greenwood market is transported to the compress by automobile, truck or wagon, and approximately 70 per cent is transported to said compresses by common carriers engaged in interstate commerce. After the cotton has been placed in said compresses and warehouse receipts have been issued therefor, the appellant, H. Chassaniol, and other cotton buyers at Greenwood, proceeding according to the uniform and long established course of business, purchase the cotton from the producers and merchants who own it for the purpose of filling contracts of sale theretofore made by them to mills and buyers in other States and foreign countries, no sales being made to purchasers in Mississippi. In purchasing this cotton the appellant and other buyers are forced to purchase an average of 10 per cent more cotton than is necessary to fill their contracts for the reason that the owners of the cotton are not willing to split their sales so as to meet the requirements of the purchasers as to the number of bales, class and grade. This overage of 10 per cent is sold by the appellant and other cotton buyers in the local market at Greenwood to other buyers who utilize it in filling their foreign contracts, or it is shipped by the appellant and other buyers to fill orders in foreign states and countries

made after its purchase by them. All of this cotton is purchased by the appellant and the other buyers with the invariable intention of shipping to other States and foreign countries. When the destination of said cotton is determined, the common carriers load it out on shipping instructions of the owner and charge the through freight rate from the point of origin to the point of destination, instead of charging the combined rate for carriage from the point of origin to Greenwood, plus the charge for carriage from Greenwood to the point of destination outside of Mississippi.

It is the contention of the appellant that he is engaged in interstate commerce and that the privilege tax statutes and ordinances heretofore set out are, insofar as they apply to him, a tax upon interstate commerce and therefore unconstitutional.

Among other cases the appellant states that the following cases sustain his contention in regard to the interstate character of his business of cotton buyer and in regard to the unconstitutionality of the statutes and ordinances levying the privilege taxes complained of, to-wit:

Lemke v. *Farmers' Grain Co.*, 258 U. S. 50;
Shafer v. *Farmers' Grain Co.*, 268 U. S. 189;
Stafford v. *Wallace*, 258 U. S. 495;
Bowman v. *Continental Oil Co.*, 256 U. S. 642;
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282;
Wagner v. *Covington*, 251 U. S. 95;
Young v. *Hiawatha Gin & Mfg. Co.*, 17 Fed. (2d) 193.

See record in *Matthews* v. *Rodgers*, Number 84 at October Term, 1931, of the Supreme Court of the United States, with special reference to the final decree by the District Court, composed of three judges, enjoining the collection

of the identical tax here complained of, under identical circumstances.

A. G. S. Ry. Co. v. *McFadden,* 232 Fed. 1003;
People v. *Perry,* 291 Pac. 237;
United States v. *Gosho Co.,* 23 Fed. (2d) 675;
Sonneborn Bros. v. *Keeling,* 262 U. S. 515;
Foster Fountain Packing Co. v. *Haydel,* 278 U. S. 10;
Carson v. *Vial,* 279 U. S. 164;
United States v. *Erie Ry. Co.,* 280 U. S. 10.

Respectfully,

EDWARD W. SMITH,
WARD ALLEN,
MARCELLUS GREEN,
GARNER W. GREEN,
Counsel for Appellants.

August 9, 1933.

APPENDIX.

SECTION 56, OF CHAPTER 88, MISSISSIPPI LAWS OF 1930.—"COTTON BUYERS. Every person engaged in the business of buying or selling cotton for himself shall pay a privilege tax of one hundred ($100) dollars; but where a cotton buyer only buys cotton from one gin in only one county or buys from the producers in only one municipality, said privilege tax is twenty-five dollars ($25); the license must be issued in his name, and may be paid on or before the first day of September for a full year; only the municipality of his residence can collect a municipal privilege tax of him. Every individual, firm, partnership or corporation engaged in the business of buying or selling cotton shall take out in his or their name a State privilege tax of twenty-five dollars ($25) for every employee engaged in their business as buyer or seller, on or before the first day of September; such privilege tax shall authorize the buying or selling cotton by its bearer; and it shall be unlawful for any employee to buy or sell cotton without a privilege tax in his possession, issued in the name of his employer. Such licenses cannot be issued for less than a year. If the individual, firm, partnership, or corporation take out a municipal privilege in his or their name for the municipality of the residence of their employee and take out also the State privilege tax imposed on them above, such employee shall have the authority to buy or sell cotton in any other municipality of the State, without paying any further State or municipal privilege tax. But the above privilege taxes shall not be required of any landlord or other person who receives cotton in payment of accounts due him, nor of any merchant who pays a privilege tax on a store and who purchases only from the producer at the place of business of such merchant, nor to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

SECTION 62, OF CHAPTER 89, MISSISSIPPI LAWS OF 1932.—"COTTON BUYERS. Upon every person en-

gaged in the business of buying or selling cotton for himself, as follows:

When less than 2,500 bales are handled annually—$25.

When 2,500 bales and less than 5,000 are handled annually—$50.

When 5,000 bales or more are handled annually—$100.

Upon each person buying or selling cotton as an agent for a licensed cotton buyer—$25.

But this section shall not apply to any landlord, merchant, or other person who only receives cotton in payment of accounts due him, or to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

SECTION 2445, MISSISSIPPI CODE OF 1930: "FIRST—LICENSE TAX IS ADDITIONAL.—All cities or towns are hereby authorized to levy and collect license tax upon, and regulate all callings, trades, professions and occupations conducted, pursued, carried on or operated within the limits of said city or town, the same not to exceed fifty per centum of the State license tax levied upon the same callings, trades and professions; provided, however, that whenever the penalty attaches under the State law for failure to take out the privilege tax before beginning business, or failure to pay within the month due, said cities or towns are hereby authorized to collect a penalty equal to the amount of the license in addition thereto."

AN ORDINANCE OF THE CITY OF GREENWOOD, APPROVED FEBRUARY 3, 1930, APPEARING IN MINUTE BOOK 12, AT PAGE 56, OF THE MINUTES OF THE CITY OF GREENWOOD, AND STYLED "AN ORDINANCE LEVYING AN ANNUAL TAX ON PRIVILEGES CONDUCTED WITHIN THE LIMITS OF THE MUNICIPALITY KNOWN AS THE CITY OF GREENWOOD, TO AN AMOUNT EQUAL TO FIFTY PER CENTUM OF THE ANNUAL TAX IM-

POSED ON SUCH PRIVILEGES BY THE STATE OF MISSISSIPPI UNDER CHAPTER 88, OF THE LAWS OF MISSISSIPPI OF 1930, AND PROVIDING PENALTIES."

The ordinance reads as follows:

"Be it ordained by the Council of the City of Greenwood, Leflore County, Mississippi:

"SECTION 1. That there is hereby levied an annual tax on privileges carried on and conducted within the limits of the municipality known as the City of Greenwood by all persons, firms, corporations, businesses, callings and professions described in and mentioned in Chapter 88, of the Laws of Mississippi for 1930, to an amount equal to fifty per centum of the annual tax levied on privileges described in said chapter on each person, firm, corporation, business, calling and profession carried on in municipalities of the third class; provided, however, that no such tax shall be levied on any privileges which under the provisions of said act may be duly licensed for statewide purposes, as therein provided.

"SECTION 2. All municipal licenses shall be obtained from the City Clerk and Tax Collector at the City Hall and every person required to obtain a license for the privilege of engaging in any business included in Section 1 of this ordinance shall make application therefor to the City Clerk and Tax Collector, whose duty it shall be to issue a license to such person.

"SECTION 3. All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by the terms of this ordinance, or who shall fail to renew during the month in which it is due the license on a business for which he has heretofore procured a privilege license, shall in each or either instance, be liable for double the amount of the tax required for such business and it is hereby made the duty of the City Tax Collector whose duty it is to collect the tax on such business, to collect the said tax

penalties, issue a separate license for the tax and for the penalty, and to endorse across the face of the license issued as a penalty the words 'COLLECTED AS DAMAGES,' and the said Tax Collector shall account for all such penalties as required to account for other privilege licenses, provided, however, that the provisions of this ordinance shall not be construed as infringing upon any statutory power of any State officer to collect due and unpaid licenses as now or may be provided for by the laws of the State of Mississippi. In addition to the hereinabove described penalty the delinquent taxpayer shall be guilty of a misdemeanor and may be fined on conviction an amount not exceeding Fifty Dollars ($50).

"SECTION 4. The privilege licenses herein provided shall be and constitute a personal privilege to the person named therein to conduct the business specified in the license and shall not be transferable to any other person. No change in the name of the firm nor the taking in of a new partner nor the withdrawal of one or more of the firm shall be considered as commencing business but if any one or more of the partners remain in the firm the business shall be regarded as continued.

"SECTION 5. It is the intention of this ordinance to levy an annual privilege tax on all privileges mentioned in and described in Chapter 88, of the Laws of Mississippi for 1930, authorized by said act to be levied by municipalities having a population of between ten thousand and fifteen thousand inhabitants, being Class Three, in which the municipality of Greenwood is classed, and no privilege tax shall be imposed and levied by municipalities of the third class according to said act and all exemptions therein mentioned shall be allowed under the terms of this ordinance.

"SECTION 6. That if for any reason any section, paragraph, provision, clause, or part of this ordinance shall be held unconstitutional or invalid that fact shall not affect or destroy any other section, paragraph, provision, clause or part of this ordinance not in and of itself invalid but the

remaining portions hereof shall be in force without regard to that so invalidated; and all ordinances in conflict herewith are hereby repealed.

"SECTION 7. That for the immediate and temporary preservation of the public health, peace and safety and for the reasons of providing regular tax on all privileges conducted in the municipality in accordance with the new State Laws, it is ordered that this ordinance be enforced at and from the date of its passage."

AN ORDINANCE OF THE CITY OF GREENWOOD, MISSISSIPPI, APPROVED JUNE 7, 1932, AND APPEARING IN MINUTE BOOK 13, AT PAGE 597, OF THE MINUTES OF THE CITY OF GREENWOOD:

"Be it ordained by the Council of the City of Greenwood, Leflore County, Mississippi:

"SECTION 1. That there is hereby levied an annual tax on privileges carried on and conducted within the limits of the municipality known as the City of Greenwood by all persons, firms, corporations, businesses, callings and professions described in and mentioned in House Bill #660 of the Laws of Mississippi for 1932, to an amount equal to fifty per centum of the annual tax levied on privileges described in said chapter on each person, firm, corporation, business, calling and profession carried on in municipalities of the third class, provided, however, that no such tax shall be levied on any privilege which under the provisions of said act may be duly licensed for statewide purposes as therein provided.

"SECTION 2. All municipal licenses shall be obtained from the City Clerk and Tax Collector at the City Hall and every person required to obtain a license for the privilege of engaging in any business included in Section 1 of this ordinance shall make application therefor to the City Clerk and Tax Collector, whose duty it shall be to issue a license to such person, and all applicants for a municipal privilege license shall show the number and date of the license that has been issued for state purposes.

"SECTION 3. All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by the terms of this ordinance, or who shall fail to renew during the month in which it is due the license on a business for which he has theretofore procured a privilege license, shall in each or either instance, be liable for double the amount of the tax required for such business and it is hereby made the duty of the City Tax Collector, whose duty it is to collect the said tax penalties, to issue a separate license for the penalty, and to endorse across the face of the license issued as a penalty the words 'COLLECTED AS DAMAGES,' and the said Tax Collector shall account for all such penalties as required to account for other privilege licenses, provided, however, that the provisions of this ordinance shall not be construed as infringing upon any statutory power of any State Officer to collect due and unpaid licenses as now or may be provided for by the laws of the State of Mississippi. In addition to the hereinabove described penalty the delinquent taxpayer shall be guilty of a misdemeanor for violating the provisions of this ordinance and may be fined on conviction an amount not exceeding $50.

"SECTION 4. The privilege licenses provided shall be and constitute a personal privilege to the person named therein to conduct the business specified in the license and shall not be transferable to any other person. No change in the name of the firm nor the taking in of a new partner nor the withdrawal of one or more of the firm shall be considered as commencing business but if any one or more of the partners remain in the firm the business shall be regarded as continued.

"SECTION 5. It is the intention of this ordinance to levy an annual privilege tax on all privileges mentioned in and described in House Bill #660 of the Laws of Mississippi for 1932 authorized by said act to be levied by municipalities having a population of between ten thousand and fifteen thousand inhabitants, being Class Three, in which the municipality of Greenwood is classed, and no privilege

tax shall be imposed or levied not so authorized to be imposed and levied by municipalities of the third class according to said act and all exemptions therein mentioned shall be allowed under the terms of this ordinance.

"SECTION 6. That if for any reason any section, paragraph, provision, clause or part of this ordinance shall be held unconstitutional or invalid that fact shall not affect or destroy any other section, paragraph, provision, clause or part of this ordinance not in and of itself invalid but the remaining portion hereof shall be in force without regard to that so invalidated; and all ordinances or parts thereof in conflict herewith are hereby repealed, especially ordinance entitled 'AN ORDINANCE LEVYING AN ANNUAL TAX ON PRIVILEGES CONDUCTED WITHIN THE LIMITS OF THE MUNICIPALITY, KNOWN AS THE CITY OF GREENWOOD, TO AN AMOUNT EQUAL TO FIFTY PER CENTUM OF THE ANNUAL TAX IMPOSED ON SUCH PRIVILEGES BY THE STATE OF MISSISSIPPI UNDER CHAPTER 88 OF THE LAWS OF MISSISSIPPI FOR 1930, AND PROVIDING PENALTIES' passed June 3, 1930, and recorded in Ordinance Book 3, page 243.

"SECTION 7. That for the immediate and temporary preservation of the public health, peace and safety, and for the reasons of providing regular tax on all privileges conducted in the municipality in accordance with the new State Laws, an emergency is created and it is ordered that this ordinance be enforced at and from the date of its passage."

SECTION 225, OF CHAPTER 88, MISSISSIPPI LAWS OF 1930: "DAMAGES AND PENALTY FOR FAILURE TO PROCURE LICENSE.—All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by law, or who shall fail to renew, during the month in which it is due, the license on a business for which he has theretofore procured a privilege license, shall in each or either such instance be liable for double the

amount of the tax required for such business, and it is hereby made the duty of the collector whose duty it is to collect the tax on such business to collect the said tax and penalty, issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words: 'COLLECTED AS DAMAGES,' and they shall account for all such penalties, less commissions, as they are required to account for other privilege taxes. In addition to the hereinabove described penalties the delinquent taxpayer shall be guilty of a misdemeanor and subject to the penalties therefor."

SECTION 2549, MISSISSIPPI CODE OF 1930: "PENAL OFFENSES UNDER GENERAL LAWS.—All offenses under the penal laws of the State which are a misdemeanor shall, when so provided by a general ordinance of the municipality, also be offenses against the city, town or village in whose corporate limits the offense may have been committed to the same effect as though such offenses were made offenses against the city, town or village by separate ordinance in each case, and upon conviction thereof the same punishment shall be imposed by the city, town or village as is provided by the laws of the State with regard to such offenses against the State not in excess of the maximum penalty which may be imposed by municipal corporations."

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